

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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GYPSIE JONES,

NO. CIV. S 04-2002 MCE KJM

Plaintiff,

v.

MEMORANDUM AND ORDER

DOLLAR TREE STORES, INC., dba
DOLLAR TREE #2041,

Defendant.

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Plaintiff Gypsie Jones ("Jones") brings this action against Defendant Dollar Tree Stores, Inc. ("Dollar Tree") alleging that Dollar Tree Store #2041 located at 3615 Northgate Boulevard, Sacramento, California ("Store #2041") is in violation of California's Unruh Civil Rights Act, Cal. Civil Code §§ 51 et. seq. ("Unruh Act") and the Americans with Disabilities Act, 42 U.S.C. § 12188(a)(2) ("ADA"). She is seeking damages pursuant to the Unruh Act and injunctive relief pursuant to the ADA. Jones filed the instant suit against Dollar Tree on September 27, 2004, and now brings this motion for summary judgment, or in the

1 alternative, summary adjudication. For the reasons explained
2 below, Jones' motion is denied.¹

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4 **BACKGROUND**

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6 Gypsie Jones is a paraplegic and requires the use of a
7 wheelchair for mobility. This dispute arises out of Jones'
8 visits to Store #2041 during the spring and early summer of 2004
9 as well as the fall of 2005. During these visits, Plaintiff
10 alleges she encountered architectural barriers that made it
11 difficult or impossible for her to have full and equal access to
12 the goods and services provided by Defendant. The difficulty in
13 accessing Store #2041 is due to alleged defects in the entrance
14 doors, the check stand, the ATM screen, the exit door and the
15 women's restrooms.

16 After her first visit to Store #2041, Jones advanced a
17 letter to the management of said store describing the alleged
18 barriers and requesting that they be remedied. On subsequent
19 visits to the store, Jones avers that none of the barriers she
20 identified in her letter had been corrected. As a result of
21 Defendant's alleged inaction, Plaintiff filed the instant law
22 suit seeking damages and injunctive relief under both state and
23 federal law.

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¹Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

Rule 56 also allows a court to grant summary adjudication on part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party seeking to recover upon a claim ... may ... move ... for a summary judgment in the party's favor upon all or any part thereof."); See also Allstate Ins. Co. v. Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

The standard that applies to a motion for summary adjudication is the same as that which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a), 56(c); Mora v. ChemTronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. at 323(quoted Rule 56(c)).

1 If the moving party meets its initial responsibility, the
2 burden then shifts to the opposing party to establish that a
3 genuine issue as to any material fact actually does exist.
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
5 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.
6 253, 288-89 (1968).

7 In attempting to establish the existence of this factual
8 dispute, the opposing party must tender evidence of specific
9 facts in the form of affidavits, and/or admissible discovery
10 material, in support of its contention that the dispute exists.
11 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that
12 the fact in contention is material, i.e., a fact that might
13 affect the outcome of the suit under the governing law, and that
14 the dispute is genuine, i.e., the evidence is such that a
15 reasonable jury could return a verdict for the nonmoving party.
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52
17 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper
18 Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,
19 "before the evidence is left to the jury, there is a preliminary
20 question for the judge, not whether there is literally no
21 evidence, but whether there is any upon which a jury could
22 properly proceed to find a verdict for the party producing it,
23 upon whom the onus of proof is imposed." Anderson, 477 U.S. at
24 251 (quoting Improvement Co. v. Munson, 14 Wall. 442, 448, 20
25 L.Ed. 867 (1872)). As the Supreme Court explained, "[w]hen the
26 moving party has carried its burden under Rule 56(c), its
27 opponent must do more than simply show that there is some
28 metaphysical doubt as to the material facts Where the record

1 taken as a whole could not lead a rational trier of fact to find
2 for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

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4 In resolving a summary judgment motion, the evidence of the
5 opposing party is to be believed, and all reasonable inferences
6 that may be drawn from the facts placed before the court must be
7 drawn in favor of the opposing party. Anderson, 477 U.S. at 255.
8 Nevertheless, inferences are not drawn out of the air, and it is
9 the opposing party's obligation to produce a factual predicate
10 from which the inference may be drawn. Richards v. Nielsen
11 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),
12 aff'd, 810 F.2d 898 (9th Cir. 1987).

13 14 ANALYSIS

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16 Under the ADA, "[n]o individual shall be discriminated
17 against on the basis of a disability in the full and equal
18 enjoyment of the goods, services, facilities, privileges,
19 advantages or accommodations of any place of public accommodation
20 by any person who owns, leases (or leases to), or operates a
21 place of public accommodation." 42 U.S.C. § 12182(a). Unlawful
22 discrimination exists when there is a "...failure to design and
23 construct facilities ... that are readily accessible to and
24 usable by persons with disabilities, except where an entity can
25 demonstrate that it is structurally impracticable to meet the
26 requirements." 42 U.S.C. § 12183(a)(1).

27 Defendant Dollar Tree opposes Plaintiff's summary judgement
28 motion on the ground that her allegations are without merit under

1 disability access requirements. Defendant contends that Store
2 #2041 is, in fact, compliant with the Americans with Disabilities
3 Act Accessibility Guidelines ("ADAAG") as codified at 28 C.F.R.
4 Pt. 36, Appendix A. In reply, Plaintiff argues that Defendant
5 has failed to raise any issue of material fact regarding the
6 existence of barriers in Store #2041. She avers that the sworn
7 declarations submitted by Defendant are inadmissible and should,
8 therefore, be disregarded by this Court.

9 In fact, Defendant submitted the sworn declarations of its
10 Senior Project Manager, John Fox ("Fox") and its ADA
11 accessibility expert, Kim Blackseth ("Blackseth"). Both Fox and
12 Blackseth expressly and unequivocally contradict the facts
13 presented by Plaintiff regarding Store #2041 and the existence of
14 alleged architectural barriers. Specifically, both Defendant's
15 declarants claim that Store #2041 is ADA compliant.

16 As her main assignment of error, Plaintiff claims that both
17 declarants fail to base their declarations on personal knowledge
18 of the underlying facts as required under Rule 56. Consequently,
19 Plaintiff claims, both declarations should be disregarded by this
20 Court in resolving the present summary judgment motion.

21 Plaintiff is correct that, as a general matter, if a party
22 chooses to utilize a sworn statement in support or opposition of
23 a summary judgment motion, that statement must be based on
24 personal knowledge. See Fed. R. Civ. P. 56(e); see also Columbia
25 Pictures Indus., Inc. v. Prof. Real Estate Investors, Inc., 944
26 F.2d 1525, 1529 (9th Cir. 1991). Nonetheless, in certain limited
27 circumstances, personal knowledge may be inferred from the
28 content of a declaration. See Barthelemy v. Air Lines Pilots

1 Ass'n, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal
2 knowledge of various corporate activities could be presumed by
3 virtue of his position).

4 Fox's declaration plainly states that he is a Senior Project
5 Manager for Dollar Tree and is largely responsible for ADA
6 compliance. See Fox Decl. at ¶1 and ¶3. As the person charged
7 with ADA compliance for Defendant, his personal knowledge can be
8 inferred from the content of his declaration. In addition, his
9 declaration states that he was present during Plaintiff's
10 inspection of Store #2041 further establishing his personal
11 knowledge of the facts in this case. See Fox Decl. 1 at ¶4.
12 Similarly, Blackseth's declaration expressly establishes his
13 personal knowledge of the structure and conditions in Store #2041
14 wherein he states that he "...personally inspected [Store #2041]
15 for [ADA] compliance." Blackseth Decl. 2, ¶8. The Court is
16 satisfied that both declarants have sufficient personal knowledge
17 to meet the requirements of Rule 56(e).

18 Both Fox's and Blackseth's declarations unequivocally
19 contradict Plaintiff's assertion that Store #2041 is not ADA
20 compliant. The evidence presented by a party opposing a summary
21 judgment motion is to be believed, and all reasonable inferences
22 that may be drawn from the facts placed before the court must be
23 drawn in favor of the opposing party. In drawing all reasonable
24 inferences in favor of Defendant, the Court finds that sufficient
25 issues of material fact exist to preclude summary judgment.

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CONCLUSION

For the foregoing reasons, Plaintiff's summary judgment motion is DENIED.

IT IS SO ORDERED.

DATED: December 6, 2005

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE